

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROY BROWN,

Plaintiff,

v.

Case No. 07-11312
Honorable Patrick J. Duggan

LINDA MATUSZAK, COLLEEN KOENIG,
and JAN TROMBLEY,

Defendants.

OPINION AND ORDER DENYING DEFENDANTS' MOTION TO DISMISS

Plaintiff filed this civil rights action pursuant to 42 U.S.C. § 1983, contending that Defendants violated his constitutional rights by interfering with his receipt of legal mail. This Court will not repeat the procedural history of this case except to indicate that it has dismissed Plaintiff's complaint on two occasions— first *sua sponte* and then in response to Defendants' motion to dismiss— only to be reversed by the Sixth Circuit each time. Presently before the Court is Defendants' renewed motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), filed March 29, 2011. (Doc. 66.) The Court referred the motion to Magistrate Judge Charles Binder for a report and recommendation ("R&R") pursuant to 28 U.S.C. § 636(b)(1)(B). (Doc. 67.)

On September 15, 2011, Magistrate Judge Binder issued an R&R with respect to Defendants' motion to dismiss. (Doc. 73.) Magistrate Judge Binder recommends that this Court deny Defendants' motion, reasoning that Plaintiff's newly filed complaint

incorporates the attached memorandum he filed in support of his state court motion for relief from judgment and that the Sixth Circuit Court of Appeals already has found that the motion states non-frivolous claims. At the conclusion of the R&R, Magistrate Judge Binder informs the parties that they must file any objections to the R&R within fourteen days. (*Id.* at 7.) On September 23, 2011, Defendants filed objections to the R&R.

When objections are filed to a report and recommendation by a magistrate judge on a dispositive matter, the Court “make[s] a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). The Court, however, “is not required to articulate all of the reasons it rejects a party’s objections.” *Thomas v. Halter*, 131 F. Supp. 2d 942, 944 (E.D. Mich. 2001) (citations omitted). A party’s failure to file objections to certain conclusions of the Report and Recommendation waives any further right to appeal on those issues. *See Smith v. Detroit Fed’n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir.1987). Likewise, the failure to object to certain conclusions in the magistrate judge’s report releases the Court from its duty to independently review those issues. *See Thomas v. Arn*, 474 U.S. 140, 149, 106 S. Ct. 466, 472 (1985).

Contrary to Defendants’ assertion, this Court does not find Magistrate Judge Binder’s reasoning “circular.” (*See* Doc. 74 at 1.) The Sixth Circuit reversed this Court’s decision granting Defendants’ previous motion to dismiss because, on appeal, Plaintiff attached the memorandum of law that he filed in support of his Rule 6.500 motion and the Sixth Circuit found that the memorandum “makes clear that he *has* sufficient facts to

demonstrate that the underlying claims were non-frivolous.” *Brown v. Matauszak*, 415 F. App’x 608, 609 (6th Cir. 2011) (emphasis in original). Defendants fail to demonstrate that Magistrate Judge Binder erred in concluding that Plaintiff’s incorporation of this memorandum into his newly filed complaint– something he failed to do before– is sufficient to survive their motion to dismiss. Also contrary to Defendants’ suggestion, the Sixth Circuit did not find or suggest that Plaintiff had to allege the facts and arguments set forth in his Rule 6.500 motion in the complaint he filed on remand. Instead, the court of appeals simply found that Plaintiff had not attached the memorandum to his pleadings prior to his appeal and, therefore, his prior pleadings were insufficient.

For these reasons and the reasons discussed in the R&R, this Court concurs with Magistrate Judge Binder’s R&R.

Accordingly,

IT IS ORDERED, that Defendants’ motion to dismiss is **DENIED**.

Date: October 24, 2011

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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AAG James T. Farrell
Magistrate Judge Charles Binder